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Lone Star Chapter

Lone Star Chapter, Sierra Club

P.O. Box 1931 Austin, Texas 78767-1931

Testimony of Cyrus Reed, Conservation Director, Lone Star Chapter, Sierra Club

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Counties have inspection and enforcement powers of basic building codes -- including energy codes -- but education and clarifications needed

Health and Safety and Local Government Codes have potential contradictions. Legislature could make some simple changes.

Texas residents who choose to live outside city limits should enjoy the same high quality building construction that city residents do. And for the most part, Texas law appears to guarantee basic fire, energy and building codes are similar in counties and cities. However, the lack of inspection and enforcement, and potential confusion about the law, has meant that some county residents have moved into new homes or apartments that are not built to the same standards as city.

Code is Clear: Counties can inspect and enforce basic building codes

Under both the Health and Safety Code Chapter 388 and Local Government Code, Chapter 233, counties should require building permit forms, require inspections -- usually through third-parties that meet basic certification standards-- and require that builders provide documentation to county officials that buildings are built to the International Residential Code. While counties can impose fees related to future infrastructure, they can not impose building permit fees however. Still, under the Local Government code, they can enforce if builders to not provide notice and documentation to homebuyers, and/or if the building is not built up to code. These are important, hard-fought powers and the Sierra Club supports the ability of counties to enforce, inspect and require basic code compliance.

Energy Codes conflict between H & S Code and Local Government Code

In 2001, the Texas legislature created the Texas Emissions Reduction Plan to deal with our ozone air quality issues and as part of this bill (SB 5) began to require a minimum energy code throughout the state through the 2000/2001 Residential Building Code and

the 2001 International Energy Conservation Code for commercial buildings. While local amendments were possible, they could not lower the energy efficiency of the code in areas facing air quality pollution (so-called non-attainment and near non-attainment areas). The Legislature has since twice raised codes, first through HB 3693 in 2007, which required both SECO and Energy Systems Laboratory to assess later codes and adopt them statewide if they improved energy efficiency and air quality. Subsequently, SECO required builders throughout Texas to meet the 2009 IRC/2009 IECC, and over time, most cities and some counties adopted these codes. Then, in 2015, in a compromise with builders, the environmental community and business interests, the Legislature passed HB 1736, which was then adopted as rules through SECO and required builders to comply with the energy chapter of the 2015 IRC/2015 IECC. SECO rulemaking stated that the codes became effective in September of 2016, and virtually all major cities in Texas have since adopted these codes, including Houston, Austin, San Antonio, Dallas, Corpus and many others.

Specifically, Chapter 388.003 states;

"On September 1, 2016, the energy efficiency chapter of the International Residential Code, as it existed on May 1, 2015, is adopted as the energy code in this state for single-family residential construction. On or after September 1, 2021, the State Energy Conservation Office may adopt and substitute for that energy code the latest published edition of the energy efficiency chapter of the International Residential Code, based on written findings on the stringency of the chapter submitted by the laboratory under Subsection (b-3)."

Under the statutes, counties can either follow the state code, adopt the code, or follow the code of the county seat. Most counties have not formally adopted the code, though some like Collin County have formally done so. However, whether they have adopted the code, the energy chapter of the 2015 IRC and the 2015 IECC are the state energy codes and should be followed in areas regulated by the counties

In addition, Chapter 388 of the Health and Safety Code states that builders must comply with energy codes outside of the municipal jurisdiction in one of three ways:

Sec. 388.004. ENFORCEMENT OF ENERGY STANDARDS OUTSIDE OF MUNICIPALITY. (a) For construction outside of the local jurisdiction of a municipality:

(1) a building certified by a national, state, or local accredited energy efficiency program shall be considered in compliance;

(2) a building with inspections from private code-certified inspectors using the energy efficiency chapter of the International Residential Code or International Energy Conservation Code shall be considered in compliance; and

(3) a builder who does not have access to either of the above methods for a building shall certify compliance using a form provided by the laboratory, enumerating the code-compliance features of the building.

The Local Government Code, on the other hand, references “the version of the International Residential Code published as of May 1, 2008, or the version of the International Residential Code that is applicable in the county seat of that county” as the enforceable building code. Chapter 233 requires builders to assure future buyers that they are meeting this code through documentation, and allows enforcement by counties. Last session, HB 2040 helped clarify expectations on builders and counties, providing an affirmative defense to builders meeting the letter of the law.

However, there remains a potential conflict between the H & S code and the Local Government Code, and it at least creates confusion among officials. Given the rebuilding that is occurring and will occur in Harris, Nueces, Jefferson, San Patricio, Aransas and other counties devastating the coast, assuring that builders build single-family and multi-family complexes to modern energy codes is an important quality of life issue.

The 2015 IRC is approximately 30% more energy efficient than the 2006 codes. Counties should and must enforce modern energy codes.

Solutions

First, statute requires both SECO and the Energy Systems Laboratory to reach out to stakeholders operating within County jurisdictions and educate them on the benefits of codes, and the law, which requires compliance with the higher 2015 energy codes. Specific outreach to counties has been spotty. Groups like Sierra Club, the Texas Chemical Council, Homebuilders and others like SPEER can assist in these efforts.

Second, the legislature may wish to request an opinion of the Attorney General’s Office to assure that the requirements under the Health and Safety Code related to energy codes trump the reference in the Local Government Code to an earlier version of the IRC.

Moreover, the Legislature could clean up the reference in Chapter 233 of the Local Government Code, and either refer to the H & S code, or specifically name the 2015 IRC or state whatever code adopted by SECO H & S Chapter 388 is the code local builders should follow.

Finally, the state government should consider the need to allow some of the HUD monies to be used for the human infrastructure of inspections and enforcement. Without third-party inspections and the threat of enforcement, many Texas residents will continue to live in substandard housing.

In the meantime, we believe counties have the obligation and tools to require building permits, third-party inspections and enforcement to assure compliance with modern energy codes, based on the 2015 IRC/2015 IECC, including local amendments as appropriate.

County residents should enjoy the same quality of construction enjoyed by Texans in cities, and assure that modern buildings are energy and water efficient, and resilient to climate extremes. With a booming population and rebuilds occurring throughout the Gulf region, it is only correct for builders and the counties in which they operate to meet modern safe building codes.